

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2008 MTWCC 55

WCC No. 2004-1091

JANIE L. ROBINSON

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

ORDER GRANTING IN PART RESPONDENT'S MOTION TO DISMISS

Summary: Respondent moved this Court to dismiss certain causes of action which were petitioned for by Petitioner. After oral argument clarified the present status of the claims set forth in the Petition, the Court considered whether it had subject matter jurisdiction to hear Petitioner's claims.

Held: Under *Thompson v. State of Montana*, this Court lacks subject matter jurisdiction to hear Petitioner's causes of action for declaratory judgment. Petitioner's causes of action relating to benefits and a penalty on those benefits remain.

¶ 1 Respondent Montana State Fund has moved to dismiss certain causes of action which were set forth by Petitioner Janie L. Robinson in her Third Amended Petition for Trial.¹ On August 8, 2008, this Court held oral argument on this and other motions filed by the parties, which are pending in this matter. At the time, the parties stipulated that some of the issues raised by Petitioner had been resolved. Based upon the record in this case, and the arguments presented by the parties, I have concluded that, pursuant to *Thompson v. State of Montana*,² this Court lacks subject matter jurisdiction to hear certain

¹ Although this petition was superceded by Petitioner's Fourth Amended Petition for Trial, the issues raised by Respondent and the grounds upon which I ultimately decided its motion remain applicable.

² 2007 MT 185, 338 Mont. 511, 167 P.3d 867.

issues presented by Petitioner. This matter is therefore dismissed as to specific causes of action for the reasons set forth below.

¶ 2 In *Thompson*, the Montana Supreme Court held that this Court lacked jurisdiction to issue a declaratory ruling on the constitutionality of statutes which were challenged in a case which was before this Court solely as a constitutional challenge. In its holding, the Supreme Court explained:

If the Workers have a “dispute concerning any benefits” under the Workers’ Compensation Act, and if they wish, within the context of that dispute, to challenge “the applicability of any statutory provision or of any rule or order of the agency” on constitutional grounds, they may do so. . . . On the other hand, if the Workers wish to challenge the constitutionality of a statutory provision, rule, or order *outside* the context of a dispute concerning benefits, they must do so in district court.³

In the present case, I have concluded that Petitioner has pursued her challenge to certain statutes and rules outside the context of a dispute concerning benefits. Therefore, this Court lacks the subject matter jurisdiction to hear those issues.

¶ 3 In her Fourth Amended Petition for Trial, Petitioner sets forth seven causes of action. The first, third, and fourth causes of action are declaratory judgment actions. The second cause of action is a plea for a penalty pursuant to § 39-71-2907, MCA. Petitioner’s fifth cause of action alleges that she is permanently totally disabled, and her sixth cause of action alleges that her benefit rate has been improperly calculated by Respondent. At the August 8, 2008, oral argument, the parties stipulated that both the fifth and sixth causes of action have been resolved.

¶ 4 Petitioner’s seventh cause of action alleges that Respondent “has failed to pay benefits as provided by law.”⁴ At the August 8, 2008, oral argument, the parties agreed that the only benefit that has not been paid is a single medical claim relating to an emergency room visit. However, it is undisputed that Petitioner’s claim regarding this specific incident was denied on causation grounds and not because of any of the statutes or rules on which Petitioner seeks declaratory judgment in the present action.

¶ 5 While Respondent has agreed that the expenses relating to this specific emergency room visit is a benefit in dispute, pursuant to *Thompson*, for this Court to have subject matter jurisdiction to hear a declaratory judgment action, there must be a dispute

³ *Thompson*, ¶ 34.

⁴ Fourth Amended Petition for Trial at 11. (Docket Item No. 88.)

concerning benefits and the declaratory judgment sought must be ***within the context of that dispute***. In the present case, the disputed benefit has no relation to the declaratory judgment sought. Therefore, it is insufficient to confer jurisdiction for the declaratory judgment Petitioner seeks. Respondent's motion to dismiss is therefore granted as to Petitioner's first, third, and fourth causes of action.

¶ 6 Remaining are Petitioner's seventh cause of action – the dispute concerning Respondent's denial of payment for a specific emergency room visit – and Petitioner's second cause of action – whether Petitioner is entitled to a penalty for Respondent's denial of the payment of that medical expense. This matter will proceed on those issues.

ORDER

¶ 7 Respondent's motion to dismiss is **GRANTED** regarding Petitioner's first, third, and fourth causes of action.

¶ 8 Petitioner's fifth and sixth causes of action have been resolved and are therefore moot.

¶ 9 This matter will proceed on Petitioner's second and seventh causes of action.

DATED in Helena, Montana, this 31st day of December, 2008.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Lawrence A. Anderson
Daniel B. McGregor
Judy Bovington
Larry W. Jones (Courtesy Copy)
Submitted: December 21, 2007